香港申訴專員公署

Office of The Ombudsman, Hong Kong

主動調查報告

Direct Investigation Report



政府對私人樓宇污水渠錯誤接駁至雨水收集系統問題的處理

Government's Handling of Misconnection of Private Building Sewers to Stormwater Collection System

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Executive Summary
Direct Investigation Report

Government's Handling of Misconnection of Private Building Sewers to Stormwater Collection System

Introduction

According to the Environmental Protection Department's ("EPD") data, the misconnection of building sewers to the building or communal stormwater drainage system (hereinafter referred to as "sewer misconnection") is one of the major pollution sources affecting the quality of Hong Kong coastal waters. The resultant inflow of untreated sewage into the sea causes pollution and foul odours. EPD estimated that sewer misconnection accounted for about 30% of the total pollution discharge into the coastal waters across the territory.

2. To tackle sewer misconnection cases, EPD and the Buildings Department ("BD") commence investigations according to the Water Pollution Control Ordinance ("WPCO") and the Buildings Ordinance ("BO") respectively and institute prosecutions where necessary. The Drainage Services Department ("DSD"), playing a supportive role, assists in the investigations of EPD and BD from time to time.

3. The Ombudsman launched a direct investigation to examine the handling of sewer misconnection cases by EPD, BD and DSD with a view to ascertaining their effectiveness in tracing the source of misconnection, calling offenders to account and implementing mitigating measures.

4. In sum, we consider DSD to have properly performed its duties in investigating and referring sewer misconnection cases, as well as implementing mitigating measures. Our comments regarding the handling of sewer misconnection cases by EPD and BD are as follows.

EPD

(I) <u>EPD should endeavour to collect evidence and take enforcement action</u>

5. Under the WPCO, the burden is on EPD to adduce evidence to prove the suspect

to have discharged wastewater into the stormwater collection system in order to substantiate a charge against him or her. EPD officers must enter the suspected premises and search for wastewater discharging on the spot. The officers need to collect wastewater samples for testing and conduct dye-tracing tests immediately to establish the link between the inlet and outlet of discharge. However, it would be impossible for EPD officers to collect wastewater samples and take follow-up actions pursuant to the WPCO if the suspect stops using relevant facilities in the presence of the officers. We acknowledge the practical difficulties facing EPD in enforcing the WPCO. Nevertheless, EPD should endeavour to take enforcement action against offenders under the WPCO, so as to contain coastal water pollution caused by the inflow of untreated sewage.

6. EPD asserted that, given the complexity of drainage connections of buildings in Hong Kong, it is often impossible to trace pollution sources or locations of sewer misconnection by mere observation of the drainage pipes at the building's external wall without referring to the drainage plans. In the circumstance, it would not be possible to meet the requirements for applying to the court for a warrant to enter the premises ("Warrant of Entry"). Moreover, experience reveals that it is unlikely possible for officers to gather useful evidence upon entry onto the suspected premises for investigation with the consent of the residents or under a Warrant of Entry. EPD, therefore, generally will not apply to the court for a Warrant of Entry. We have reservation on EPD's understanding of the standard of proof regarding the application for a Warrant of Entry.

7. In our view, where sewer misconnection of a premises can be seen from the outside, it is highly probable that wastewater is being discharged by its residents into the building's stormwater manhole continuously. If EPD can identify sewer misconnection on the building's external wall and obtain wastewater samples from the building's stormwater manhole, such *prima facie* evidence, though not conclusive for establishing an offence under the WPCO, should be able to facilitate the application for a Warrant of Entry for further investigation. We recommend EPD seek the Department of Justice's ("DoJ") advice to explore the possibility of using circumstantial evidence for warrant applications to facilitate in-depth investigation and evidence gathering regarding suspected sewer misconnection cases causing illegal discharge of wastewater.

8. We note that the items of unauthorised building works ("UBW") associated with sewer misconnection are categorised as actionable items. Pursuant to the BO, BD is empowered to enter relevant premises to ascertain whether its provisions have been

complied with. In case the occupant of the premises is uncooperative or refuses BD officers' entry for investigation, BD may apply to the magistrate for a Warrant of Entry, which will be issued if the latter is satisfied there are reasonable grounds for suspecting that the drains or sewers of the premises are in a defective or insanitary condition. For cases involving difficulties entering the premises, we recommend that, in addition to applying to the court for a Warrant of Entry by itself, EPD also consider taking joint action with BD to increase success of entering such premises for investigation.

9. We do not agree with EPD that since it is not empowered by the WPCO to compel the responsible person to rectify sewer misconnection, the problem could only be rectified by BD compelling the responsible person to carry out remedial works pursuant to the BO. We do not consider EPD's enforcement against illegal discharge of wastewater at odds with BD's enforcement against UBW but complementary action. In addition to referral of sewer misconnection cases to BD, EPD should also endeavour to take enforcement action against illegal discharge of wastewater under the WPCO.

10. In the long run, EPD should review the WPCO and consider making legislative amendments to enhance its enforcement effectiveness.

BD

11. Cases (2) to (5) in Chapter 3 of our investigation report are the sewer misconnection cases handled by BD.

(II) <u>Serious delay in handling sewer misconnection cases</u>

12. As shown in Cases (2) and (4), BD received the referral of sewer misconnection cases in October 2009. However, the problem in both cases had remained unrectified for more than 11 years as at December 2020. In Case (3), BD got the referred sewer misconnection case in November 2009. It was not until more than a decade later that the problem was resolved in 2020. In Case (5), BD received this sewer misconnection case by referral in November 2012. The problem was only due to be resolved after seven years and a half in May 2020, as the building concerned was scheduled for demolition and all its units had been vacated. The above cases revealed serious delay on the part of BD in handling sewer misconnection cases. BD should take effective measures to avoid recurrence of similar incidents. Reasons for delay, as far as we know, are as follows:

(III) Case monitoring mechanism not effective

13. BD officers monitor the progress of case handling via the department's Building Condition Information System. Its Progress Monitoring Committee (including its directorate grade officers as members) also monitors and follows up the status of outstanding statutory orders on a regular basis. While BD has established the monitoring mechanism at different levels, some of the statutory orders were only complied with, or remained outstanding, years after issuance. This reflects that the mechanism is not effective as expected.

(IV) Failing to initiate investigation swiftly

14. As shown in Case (2), after receiving the referral of sewer misconnection case in October 2009, BD only proceeded to conduct inspection and dye-tracing tests at the building concerned in March 2010 (i.e. after five months). In Case (4), BD received the referral of sewer misconnection case in October 2009. While BD issued an advisory letter to the building's owners in March 2010 (i.e. five months later), it was not until January 2013 (i.e. three years after receiving the referral) that it conducted inspection and dye-tracing tests jointly with EPD. In Case (5), BD received the referral of sewer misconnection case in November 2012. It was not until August 2013 (i.e. after nine months) that it conducted inspection and dye-tracing tests jointly with EPD and DSD. We are of the view that upon receiving complaints or referrals of sewer misconnection cases, BD should swiftly initiate investigation to ascertain whether the problem exists, so that corresponding enforcement actions can be taken to prevent aggravation of the problem.

(V) Failing to properly allocate manpower for handling sewer misconnection cases, resulting in cases held in abeyance for years

15. We noticed that no apparent progress was made by BD over several years in following up Cases (2) to (5) during different periods. In response, BD explained that it was mainly because the responsible case officers were required to attend to other more urgent cases involving building safety, and the department was facing persistent case backlogs. Since BD needed to deploy manpower to perform special duties to address critical building safety issues, the progress of other cases was conceivably affected. Nevertheless, as those cases were without progress for years, it calls into question whether BD has properly allocated manpower to handle sewer misconnection cases. In fact, given that UBW items in sewer misconnection cases are categorised as actionable

items under BD's enforcement policy against UBW, it is highly unsatisfactory that such cases were held in abeyance for years. We urge BD to learn from this experience that it should, whilst addressing critical building safety issues, deploy manpower to continuously process and resolve other cases involving actionable UBW items.

(VI) Indecisive enforcement action

16. As shown in Case (3), after the repair order was served on the owners' corporation ("OC") in July 2010, BD conducted nine compliance inspections subsequently and all these inspections revealed that the sewer misconnection had not been rectified. It was not until November 2015 (i.e. five years after serving the repair order) that it issued a warning letter to the OC. In Case (4), following a compliance inspection where BD found that the sewer misconnection was still unrectified, it was after six months that it issued a warning letter to all of the owners of the building concerned. We are of the view that if the problem persists upon expiry of the period specified in the statutory order, BD should take decisive action to urge for the owners' speedy rectification of sewer misconnection.

(VII) Need for proactive assistance to "three-nil" buildings

17. The buildings involved in Cases (4) and (5) were without OCs. To deal with the sewer misconnection problem of the buildings, BD issued to the owners concerned various documents, including advisory letters, repair orders, warning letters and/or letters regarding default works for their buildings, but the owners did not respond. We acknowledge that it was not easy for owners of a building without OC to coordinate among themselves to comply with BD's statutory order. BD indicated to us that a referral to the Home Affairs Department ("HAD") would be made if the owners of the building with sewer misconnection problem so wished, so as to assist them to form an OC, which would in turn enable better planning and coordination of drainage rectification works. However, in Cases (4) and (5), BD only mentioned in the warning letters issued to all the owners of the buildings concerned that they could make enquiries with BD or HAD if they need further guidance or assistance for complying with the order, and failed to proactively refer the cases to HAD just because the owners had not indicated a wish to form OC or had faced difficulties forming it. Simply leaving it to the owners to approach HAD, and referring their cases to HAD if they so wished, BD was far from proactive. BD should, when communicating with the owners concerned, proactively introduce the service of HAD regarding OC formation.

18. Given that sewer misconnection can constitute a serious hygienic or environmental nuisance, we recommend that BD take the initiative to refer to HAD the sewer misconnection cases involving "three-nil" buildings (i.e. buildings without an OC, any form of residents' organisation or engaging a property management company). It is similar to how BD assists the owners of "three-nil" buildings to comply with fire safety directives. This would facilitate HAD to assist the owners to form an OC and advising them on matters of compliance with the statutory order. BD should also arrange its in-house Social Services Teams to assist the owners on a need basis. Moreover, we recommend that BD step up prosecution against the owners of "three-nil" buildings not complying with its statutory orders, thereby prompting them to arrange for remedial works as soon as possible. BD should also consider commissioning default works at an early stage for those buildings that have posed serious nuisance and risks to environmental hygiene and have had little progress in renovation, such that the sewer misconnection problem can be eliminated at the soonest.

Other Aspect

(VIII) Need for resolution of sewer misconnection problem at source

19. The discharge of wastewater into the sea via the stormwater collection system would impact on the quality of coastal waters and cause odours. To improve the situation, EPD has constructed, through DSD, dry weather flow interceptors to prevent polluted discharge from entering coastal waters via the stormwater collection system, and divert the wastewater collected to sewage treatment works for purification. DSD would also place odour control hydrogel in drainage systems as needed. But these are merely relief measures. We reckon that the most effective way is to root out the problem of sewer misconnection at source. We urge EPD, BD and DSD to continue with their efforts in vigorous detection of sewer misconnection, proactive enforcement against confirmed cases of misconnection, and launching publicity and education campaigns in a bid to strike the problem at the root.

Recommendations

20. In light of the above, The Ombudsman makes the following recommendations to EPD and BD respectively:

EPD

(1) seeking legal advice from DoJ to explore the possibility of adducing circumstantial evidence for warrant applications;

(2) considering taking joint action with BD for cases with difficulties in gaining entry onto the premises, so as to increase the success rate of entering such premises for investigation;

(3) reviewing the WPCO and considering making legislative amendments to enhance its enforcement effectiveness;

BD

(4) reviewing cases with outstanding statutory orders with a schedule drawn up for backlog clearance; and considering, where necessary, requesting allocation of more resources from the Government to address the persistent issue of resource constraints;

(5) improving the mechanism for monitoring case progress, and conducting site inspections swiftly and taking enforcement actions decisively;

(6) considering proactively referring those sewer misconnection cases involving "three-nil" buildings to HAD, and arranging BD's in-house Social Services Teams to assist the owners on a need basis;

(7) stepping up prosecution against the owners of "three-nil" buildings not complying with its statutory orders; and

(8) considering promptly commissioning default works for those buildings that have posed serious nuisance and risks to environmental hygiene and have had little progress in renovation.

Office of The Ombudsman
March 2021

1

INTRODUCTION

BACKGROUND

1.1 The quality of Hong Kong coastal waters is generally affected by wastewater discharge in nearshore areas. According to the Environmental Protection Department's ("EPD") data, the misconnection of building sewers to the building or communal stormwater drainage system (hereinafter referred to as "sewer misconnection") is one of the major pollution sources[1] affecting the quality of Hong Kong coastal waters. The resultant flow of untreated sewage into the sea causes pollution and foul odours at the waterfront, as well as prolonged nuisance to residents and passers-by in the area. EPD estimated that sewer misconnection accounted for about 30%[2] of the total pollution discharge into the coastal waters across the territory.

SCOPE AND PROCESS OF INVESTIGATION

1.2 In view of this, The Ombudsman announced on 21 May 2020 the launch of a direct investigation pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance to examine the handling of sewer misconnection cases by EPD, the Buildings Department ("BD") and the Drainage Services Department ("DSD") with a view to ascertaining their effectiveness in tracing the sources of misconnection, calling the offenders to account and implementing appropriate mitigating measures.

1.3 In this direct investigation, this Office has:

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[1] The other two major pollution sources are:
(a) cross connection or leakage between communal sewerage and stormwater drainage systems; and
(b) non-point source pollutants entering the stormwater drainage system after being rinsed or washed down by rainwater from the streets and public places.

[2] Source of information: Review of West Kowloon and Tsuen Wan Sewerage Master Plans completed by EPD in 2010.

(1) invited public views and scrutinised the three submissions received subsequently;

(2) examined information provided by EPD, BD and DSD; and

(3) met with representatives from EPD, BD and DSD to dig deeper into the issue.

1.4 On 22 February 2021, we issued a draft investigation report to EPD, BD and DSD for comments. Upon receiving their replies and comments, this final report was completed on 26 March 2021.

2

SOURCE TRACING, INVESTIGATION AND ENFORCEMENT

2.1 EPD, BD and DSD examine cases of sewer misconnection from the perspective of their own concerns. EPD and BD, as the authority administering the Water Pollution Control Ordinance ("WPCO") (see **Appendix I**) and the Buildings Ordinance ("BO") (see **Appendix II**) respectively, commence investigations and institute prosecutions where necessary pursuant to the legislation. DSD, playing a supportive role, assists in the investigations of EPD and BD from time to time.

SOURCE TRACING

EPD

2.2 For the investigation of a suspected case of wastewater discharge, EPD would start with the communal stormwater manhole that has been polluted. Based on the drainage record plans maintained by DSD, EPD would identify one or multiple buildings or other spots as the suspected sources of wastewater. Colour dyes are then put into the terminal foul manholes of the buildings or spots concerned to ascertain whether the wastewater flows downstream to the communal stormwater manhole where polluted water has been found. EPD would also collect water samples from the discharge sites to test whether the outflow is wastewater. Where sufficient evidence is available, EPD would prosecute the offenders for discharging wastewater. If individual premises of the building are involved in the case, EPD officers can only enter those premises to commence investigation and gather evidence with the consent of the residents or a warrant issued by a magistrate ("Warrant of Entry").

2.3 To tackle illegal discharge of wastewater, EPD would issue warning letters to the parties concerned urging for proper measures to be adopted. For cases involving misconnection of private building sewers, EPD would also remind the property owners or management offices to rectify the misconnection as soon as possible, and refer the cases to BD for further action. Upon gathering sufficient evidence, EPD would prosecute the offenders for illegal discharge of wastewater. For cases involving leakage or misconnection of communal sewers, EPD would make a referral to DSD for further action.

2.4 In 2016, EPD initiated the Consultancy Study on Further Enhancing Nearshore Water Quality and General Environment of Victoria Harbour. In this study, the consultant surveyed around 4,700 stormwater manholes and found 153 of them contaminated by organic pollutants and Escherichia coli. Out of these 153 manholes, EPD found 44 sewer misconnection cases as at December 2020 through the investigation of pollution sources. These cases were referred to BD for further action.

2.5 Furthermore, to conduct district surveys in a systematic and comprehensive manner for tracing pollution sources, and to align with the initiatives of promoting a water-friendly culture and activities announced in the 2015 Policy Address, EPD has since 2014 commissioned contractors to conduct large-scale surveys of pollution sources in designated districts. The contractors would uncover the communal stormwater manholes within the survey area to check on any inflow of wastewater. The survey results, together with any suspected sources of pollution, had been submitted to EPD for further action. As at December 2020, 2,650 buildings had been covered in the completed surveys with 106 sewer misconnection cases identified by EPD.

BD

2.6 Pursuant to the BO, other than exempted building works as prescribed or minor works[3] carried out under the simplified requirements of the Minor Works Control System, BD's prior approval of building plans and consent to commence works before any installation or alteration works to the drainage of private buildings are to be sought. Otherwise, the works will be regarded as unauthorised building works ("UBW"). As for exempted building works carried out within private premises, BD's prior approval

[3] Minor works are to be carried out by prescribed building professionals and/or prescribed registered contractors pursuant to the BO and its relevant regulations. BD will conduct audit checks, on a random basis, upon completion of minor works to ensure their quality, including reviewing the documents submitted and conducting site inspections as necessary.

is not required. However, compliance of such works with the standards prescribed for building works under relevant regulations is still required, or else they will also be regarded as UBW. Under BD's current enforcement policy against UBW, the UBW items associated with sewer misconnection are categorised as actionable because they cause a serious health or environmental nuisance.

2.7 Upon receiving a report or referral of sewer misconnection, BD would conduct inspection. Where sewer misconnection is confirmed, BD would urge the owner concerned to rectify the irregularity by issuing an advisory letter. If the irregularities persist, BD can serve on the owner a removal or repair order under the BO (hereinafter referred to as "statutory order") requiring rectification within a specified period. After expiry of the specified period, BD would conduct compliance inspection. Any owner who has failed to comply with the statutory order might be prosecuted. Moreover, depending on the circumstances of each case, BD may also arrange for default works to be carried out by its consultants and Government contractors, the costs of which, together with any supervision fees and surcharges, will be recovered from the owner upon completion.

DSD

2.8 Upon receiving a complaint of sewer misconnection case, DSD would inspect the downstream communal pipes of the building. If sewer misconnection is found, DSD will refer the case, together with its inspection records, to EPD and BD for further action. DSD also assists EPD and BD to investigate suspected misconnection cases on request, including uncovering communal manholes and conducting dye-tracing tests.

2.9 DSD keeps track of sewer misconnection cases during its routine inspections of communal pipes. Generally, all stormwater and foul manholes managed by DSD are inspected every two years, while closed circuit television surveys are conducted for all stormwater drains and sewers managed by DSD every five years. If sewer misconnection is found during these inspections, DSD will attempt to trace the pollution source on-site based on the drainage record plans and as-built drawings. As far as practicable, DSD will trace the source of wastewater as far as the communal manhole located closest to the building's terminal manhole. The case and relevant inspection reports will be referred to EPD and BD for further action.

2.10 After referral of suspected cases of sewer misconnection to relevant

departments, DSD would check the case progress quarterly and would close a case only when notified of rectification of the irregularities or nil misconnection.

INVESTIGATION AND ENFORCEMENT

EPD

2.11 The statistics on sewer misconnection cases identified by EPD through investigation of illegal discharge of wastewater and its enforcement action between 2016 and 2020 are given in **Table 1**.

Table 1: Statistics on investigation and enforcement action undertaken by EPD with respect to sewer misconnection cases

	Year				
	2016	**2017**	**2018**	**2019**	**2020**
Cases received *(a)***	634	740	806	802	703
Confirmed cases requiring follow-up action *((b)=(c)+(d))*	75	59	105	91	51
Cases rectified *(c)*	63 (84%)*	48 (81%)*	79 (75%)*	43 (47%)*	16 (31%)*
Cases not rectified *(d)****	12 (16%)*	11 (19%)*	26 (25%)*	48 (53%)*	35 (69%)*
Prosecution cases *(e)*	2	0	2	0	0

* Figures in brackets are the percentages of such cases over the total number of confirmed cases requiring follow-up action (item *(b)*).

** Cases in item *(a)* are complaints received by EPD with respect to wastewater discharge and illegal pipe connection, including various pollution sources and categories, such as construction sites, garages, restaurants, commercial and residential buildings, etc., amid which those suspected of involving sewer misconnection account for around 15%.

*** Cases in item *(d)* have been referred to relevant departments for further action.

2.12 In 2008, EPD sought legal advice from the Department of Justice ("DoJ") regarding the burden of proof under the WPCO. EPD is to submit the analytical results of water samples to the court to prove a breach of the WPCO. To this end, EPD must enter the suspected premises to search for wastewater discharging on the spot for cases involving individual residents. Wastewater samples are to be collected for testing and dye-tracing tests conducted immediately to confirm the link between the inlet and outlet of discharge. Prior to application to the court for a Warrant of Entry, EPD should have sufficient and actual grounds for reasonably suspecting that wastewater is illegally discharged by the residents. Nonetheless, most buildings in Hong Kong are multi-storey with numerous units. Given the complexity of their drainage connections, it is often impossible to trace the pollution sources or locations of sewer misconnection by mere observation of the surface drains (while some drains are concealed) without referring to the drainage plans. As such, it would not be possible to meet the requirements for warrant application. EPD also remarked that general households seldom discharge wastewater continuously. Besides, once relevant facilities (such as kitchen and toilet) are not in use in the presence of EPD officers, EPD will not be able to collect water samples. Enforcement experience has confirmed the foregoing circumstances. Therefore, residents discharging wastewater are unlikely caught red-handed, rendering a breach under the WPCO hardly provable. EPD, unless necessary, seldom applies to the court for a Warrant of Entry.

2.13 EPD further asserted that even if investigation is conducted from a reverse direction and wastewater samples are collected from the outlet at the relevant communal stormwater drain, it can hardly rule out the inflow of other wastewater into the drainage network due to the complexity of sewerage connections, existence of numerous hidden points and usual lack of plumbing installation records. Nor can it ascertain the specific source of wastewater, or whether the wastewater samples are from one or more households, thereby making it difficult to prove a case beyond reasonable doubt.

2.14 Owing to the above difficulties, EPD officers would mostly issue warnings to relevant parties on the spot while handling suspected sewer misconnection cases resulting in illegal discharge of watewater. EPD would also urge the property owners or management offices concerned in writing for stopping wastewater discharge with appropriate measures, and reminding the relevant parties of rectifying sewer misconnection as soon as possible, apart from referring such cases to BD for further action (see **para. 2.3**).

2.15 EPD furthered that its administration of the WPCO aims at controlling illegal discharge of wastewater into the waters of Hong Kong or the communal drainage system. The WPCO is targeted at the persons illegally discharging wastewater, rather than those responsible for sewer misconnection. Nor is EPD empowered by the WPCO to force rectification of sewer misconnection upon the responsible persons (such as the property management company or owners' corporation ("OC") of the building concerned). EPD held that sewer misconnection could only be rectified by BD compelling the relevant parties to carry out necessary works pursuant to the BO, and assisting the property owners to effect repairs under its assistance schemes.

BD

2.16 The statistics on investigation and enforcement actions undertaken by BD between 2016 and 2020 with respect to sewer misconnection cases are given in **Table 2**.

Table 2: Statistics on investigation and enforcement action undertaken by BD with respect to sewer misconnection cases

	Year				
	2016	**2017**	**2018**	**2019**	**2020**
Cases received *(a)*	242	407	330	256	273
Confirmed cases of sewer misconnection requiring follow-up action *(b)*	15	99	42	41	31
Statutory orders issued *((c)=(d)+(e))*	9	14	8	20	64
Statutory orders complied with *(d)*	6 (67%)*	8 (57%)*	4 (50%)*	9 (45%)*	33 (52%)*
Statutory orders not complied with *(e)*	3 (33%)*	6 (43%)*	4 (50%)*	11 (55%)*	31 (48%)*
Prosecution cases *(f)*	0	1	1	9	8

* Figures in brackets are the percentages of such statutory orders over the total number of statutory orders issued (item *(c)*).

2.17 BD stated that it has in place the Building Condition Information System ("BCIS") for recording information such as the date of receiving a case, case category and subsequent enforcement actions. Based on the information available from the BCIS, BD officers at different levels monitor the progress of cases periodically and systematically. BD has also established the Progress Monitoring Committee (including its directorate grade officers as members) at different levels to monitor and follow up on the cases not compliant with statutory orders on a regular basis.

2.18 BD added that it has all along adopted a risk-based approach for prioritising its enforcement actions to address various types of building safety issues in an orderly manner. For each and every critical incident of building safety[4], BD would also proactively deploy manpower for special duties.

2.19 BD pointed out that the number of UBW-related reports has been on the rise over the past ten years. Between 2011 and 2020, BD handled an average of around 36,600 reports each year. Compared with an average of around 24,000 reports each year between 2001 and 2010, there was a spike of 53%. Since the building collapse incident on Ma Tau Wai Road in 2010, the number of reports about derelict or defective buildings has been escalating. Between 2011 and 2020, BD handled an average of around 14,000 reports each year. Compared with an average of around 10,300 reports each year between 2001 and 2010, there was an increase of 36%. Given the hikes in workload, it was imperative for BD to concentrate resources on more pressing cases. The handling of other cases, including the progress of sewer misconnection cases, was inevitably affected by its re-prioritisation of resources.

2.20 BD indicated that to expedite the handling of sewer misconnection cases, it has recruited more contract staff with the financial assistance under the Anti-epidemic Fund 2.0. These new recruits have assumed duty gradually and started to follow up on the outstanding statutory orders involved in sewer misconnection cases. BD also wised to further reinforce its manpower through the proposed funding for supporting employment under the 2021-22 Budget.

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4 Including inspection of more than 4,000 buildings aged 50 years or above subsequent to the building collapse incident on Ma Tau Wai Road in 2010; inspection of cantilevered slab canopies of around 4,000 buildings across the territory subsequent to the canopy collapse incident on Kin Kwan Street, Tuen Mun in 2011; large-scale inspection of subdivided flats for domestic use subsequent to the fire of hawker stalls at Fa Yuen Street in 2011; territory-wide inspection of mini-storage facilities subsequent to the mini-storage fire in Ngau Tau Kok in 2016; inspection of the common means of escape at 2,800 aged buildings for domestic and composite use subsequent to the fatal fire on Canton Road, Yau Ma Tei in 2020. BD also followed up the irregularities identified in the above inspections and took enforcement actions accordingly.

3

CASE STUDIES

3.1 We have examined 28 sewer misconnection cases handled by EPD, BD and DSD. The following five cases are selected for case study.

EPD

Case (1): Failing to Take Wastewater Samples to Facilitate Prosecution

3.2 In March 2017, EPD received a case referred by the Highways Department involving a guesthouse ("Guesthouse A") located at Building A which had allegedly connected its sewers to a roadside stormwater inlet unlawfully and caused illegal discharge of wastewater. In April 2017, EPD conducted a dye-tracing test at Guesthouse A and confirmed that wastewater was discharged from its wash basins into communal stormwater drains through the building's misconnected communal pipes.

3.3 The sequence of major events and results of EPD's actions against Guesthouse A are given in **Table 3**.

Table 3: EPD's follow-up actions against Guesthouse A

	Date	Event
	2017	
(1)	April	Upon confirming the existence of sewer misconnection, EPD verbally warned the person in charge of Guesthouse A on the spot, and the property owner by telephone respectively.

(2)		EPD issued a warning letter to Guesthouse A urging for its immediate rectification of the problem.
(3)	May	In a compliance inspection, EPD found that the misconnected sewer was still unrectified. The person in charge of Guesthouse A informed EPD of its hiring of a contractor to carry out remedial works, which was due to commence within two days.
(4)	August	EPD conducted compliance inspection and found that remedial works had been carried out for Guesthouse A.
(5)	September	EPD conducted a dye-tracing test at Guesthouse A and confirmed resolution of the sewer misconnection problem.

3.4 EPD did not take any wastewater sample to bring a charge against Guesthouse A as Building A's communal plumbing installation was complex and the discharge of other wastewater into the stormwater drains through the same communal pipes could not be ruled out.

BD

Case (2): Failing to Initiate Investigation Swiftly; Case Held in Abeyance for Years

3.5 In October 2009, BD received a case referred by EPD concerning an alleged misconnection between the underground pipes and manholes of Building B. In March 2010, BD conducted inspection and a dye-tracing test at Building B, and confirmed that the building's underground sewers were wrongly connected to a communal stormwater manhole.

3.6 The sequence of major events and results of BD's actions against Building B are given in **Table 4**.

Table 4: BD's follow-up actions against Building B

	Date	Event
	2010	
(1)	March	BD issued an advisory letter to Building B's OC ("OC-B") urging for remedial works as soon as possible.
(2)	August	BD issued a removal order to OC-B requiring it to remove the illegal pipes and rectify the sewer misconnection.
	October 2010 to January 2013	
(3)	OC-B convened a number of general meetings to discuss issues relating to the appointment of consultant for repair works by tender and participation in the Operation Building Bright scheme.	
	2014	
(4)	December	A joint inspection and dye-tracing test by BD and EPD revealed that the sewer misconnection was still unrectified.
	2019	
(5)	July	A joint inspection and dye-tracing test by BD and EPD revealed that the sewer misconnection was still unrectified.
(6)	August	BD issued a warning letter to OC-B.
(7)	October	BD instituted prosecution against OC-B for non-compliance with the removal order.
	2020	
(8)	March	The court served a summons on OC-B.
(9)	August	OC-B did not have any representative attend the hearing. The court adjourned the case to September 2020, and arranged for serving the summons on OC-B again by hand delivery.

(10)	September	OC-B's representative pleaded guilty in the court hearing and undertook to arrange for remedial works as soon as possible.
(11)	November	OC-B informed BD that it was hiring a contractor to carry out drainage works, but the works progress was delayed due to the COVID-19 pandemic.
	2021	
(12)	January	OC-B had appointed a contractor to rectify the sewer misconnection.

3.7 BD attributed the lack of progress in Case(2) for four years between 2015 and 2018 to the re-deployment of the responsible officer to handle other more urgent cases involving building safety (see **paras. 2.18 and 2.19**).

Case (3): Failing to Issue Warning Letter Swiftly; Case Held in Abeyance for Years

3.8 In November 2009, BD received a case referred by the Joint Office for Investigation of Water Seepage Complaints regarding Building C's allegedly defective drains on its external wall facing the rear lane. In December 2009, BD's inspection confirmed that the drains were defective with wastewater discharging into the surface channel in the rear lane.

3.9 The sequence of major events and results of BD's actions against Building C are given in **Table 5**.

Table 5: BD's follow-up actions against Building C

	Date	Event
	2009	
(1)	December	BD issued an advisory letter to Building C's OC ("OC-C") urging for the replacement of drains as soon as possible.
	2010	

(2)	July	BD issued a repair order to OC-C requiring it to repair/replace the defective drains, thereby rectifying the sewer misconnection.
(3)	August	In a meeting with the Chairman of OC-C, BD officers explained the requirements under the repair order and showed him the location of sewer misconnection on-site. The Chairman undertook to explain the repair order to the owners and follow up on the repair issue.
	2011	
(4)	January and March	The consultant engaged by BD conducted two compliance inspections and found that the sewer misconnection had not been rectified.
(5)	April	The Chairman of OC-C informed BD of the withheld repair works due to the lack of consensus among the property owners/occupants. He would seek assistance from the Home Affairs Department ("HAD").
(6)	April to July	The consultant conducted five more compliance inspections which revealed that the sewer misconnection had not been rectified.
	2014	
(7)	October	In a compliance inspection, BD found that the sewer misconnection was still unrectified.
	2015	
(8)	October	In a compliance inspection, BD found that the sewer misconnection was still unrectified.
(9)	November	BD issued a warning letter to OC-C.
	2018	
(10)	December	In a compliance inspection, the consultant found that the sewer misconnection was still unrectified.

	2019		
(11)	June	BD issued a warning letter to OC-C and instituted prosecution against it for non-compliance with the repair order.
(12)	September	BD explained to the Chairman of OC-C the requirements under the repair order and Building C's drainage layout based on its approved plans, and urged him to comply with the repair order as soon as possible. The Chairman undertook to discuss with other OC members how to carry out the repair works as required.
(13)	December	BD enquired with the Chairman the progress of complying with the repair order and learnt that OC-C had applied for subsidies under Operation Building Bright 2.0. A general meeting was being organised to discuss how to launch repair works for the building, including the works under the repair order.
	2020		
(14)	March	In a compliance inspection, BD found that the sewer misconnection was still unrectified.
(15)		In a meeting with the Chairman, BD learned that OC-C was hiring a contractor to carry out the repair works.
(16)		The court served a summons on OC-C.
(17)	June	In a compliance inspection, BD confirmed that the sewer misconnection had been rectified.
(18)	November	OC-C was found guilty by the court and fined $2,000.

3.10 BD, having served the repair order on OC-C in July 2010, liaised with OC-C repeatedly to urge for carrying out the required repairs. Each time, BD was told that while OC-C was willing to comply with the repair order, it was unable to arrange the works in the absence of consensus among the property owners. For want of satisfactory progress, BD issued a warning letter to OC-C in November 2015. Furthermore, the responsible officer was re-deployed to handle other more urgent cases involving building safety (see **paras. 2.18 and 2.19**) resulting in Case (3)'s lack of

tangible progress for more than three years between August 2011 and September 2014, and for around three years between December 2015 and November 2018.

Case (4): Failing to Initiate Investigation and Issue Warning Letter Swiftly; Failing to Proactively Refer the Case to HAD[5]*; Failing to Commission Default Works in a Timely Manner; Case Held in Abeyance for Years*

3.11 In October 2009, BD received through EPD's referral the case of Building D, which was without OC. The sewers of Building D were allegedly misconnected to a communal stormwater manhole. In March 2010, BD issued an advisory letter to all owners in Building D urging for necessary repairs. In January 2013, a joint inspection and dye-tracing test conducted by BD and EPD at Building D confirmed the misconnection between its sewers and a communal stormwater manhole.

3.12 The sequence of major events and results of BD's actions against Building D are given in **Table 6**.

Table 6: BD's follow-up actions against Building D

	Date	Event
	2013	
(1)	July	BD issued an advisory letter to all owners in Building D urging for remedial works as soon as possible.
(2)	August	BD issued a repair order to all owners in Building D requiring them to repair or replace the defective drains, thereby rectifying the sewer misconnection.
	2015	
(3)	June	A joint inspection and dye-tracing test by BD and EPD revealed that the sewer misconnection was still unrectified.
(4)	December	BD issued a warning letter to all owners in Building D.

[5] In November 2011, HAD introduced the Building Management Professional Advisory Service Scheme and the Resident Liaison Ambassador Scheme, under which support services were offered to "three-nil" buildings (i.e. buildings without an OC, any form of residents' organisation or engaging a property management company). Phase 3 of the Building Management Professional Advisory Service Scheme was closed in March 2020. HAD indicated that further details will be announced in a timely manner after the Scheme is formalised.

	2016	
(5)	March	BD commissioned a consultant ("Consultant I") to carry out default works for Building D, and notified all owners of the arrangement in writing.
(6)	July	Consultant I submitted a preliminary investigation report to BD.
	2019	
(7)	September	Consultant I cancelled the works order upon its expiry.
(8)		BD commissioned another consultant ("Consultant II") to conduct inspection and dye-tracing tests to ascertain the compliance status of the repair order.
(9)	October	Consultant II's inspection and dye-tracing test revealed that the repair order had not been complied with.
(10)	December	BD issued a warning letter to all owners in Building D.
	2020	
(11)	January	BD instructed a third consultant ("Consultant III") to carry out default works for Building D. A notification letter was issued to all owners concerning the arrangement and the costs, together with any supervision fees and surcharges, to be recovered from them upon completion of the works.
(12)	February to December	Consultant III submitted the preliminary supervision plan, detailed supervision plan and site investigation report to BD, and revised them according to BD's comments.
	2021	
(13)	January	BD endorsed the detailed supervision plan and site investigation report revised by Consultant III, and arranged for default works to be carried out by a Government contractor.

3.13 BD accounted for the lack of tangible progress in Case (4) for three years between August 2016 and August 2019 by the re-deployment of the responsible officer to handle other more urgent cases involving building safety (see **paras. 2.18 and 2.19**). Furthermore, BD did not proactively refer Case (4) to HAD for further action by reason of Building D owners' lack of indication on forming or any difficulties forming an OC.

Case (5): Failing to Initiate Investigation Swiftly; Failing to Proactively Refer the Case to HAD; Case Held in Abeyance for Years

3.14 In November 2012, BD received from EPD the case of Building E, which was without OC. Building E's terminal foul manhole was allegedly misconnected to a communal stormwater manhole. EPD issued a letter to all owners/occupants in Building E requiring them to rectify the misconnection and also requested BD's follow-up action.

3.15 The sequence of major events and results of BD's actions against Building E are given in **Table 7**.

Table 7: BD's follow-up actions against Building E

	Date	Event
	2013	
(1)	August	BD conducted a joint inspection and dye-tracing test at Building E with EPD and DSD, and confirmed the existence of sewer misconnection.
(2)	September	BD issued an advisory letter to all owners in Building E urging for remedial works as soon as possible.
(3)	December	BD issued a repair order to all owners in Building E requiring them to conduct site investigation and rectify the misconnected drains.
	2014	
(4)	May	BD issued a warning letter to all owners in Building E.
(5)	September	BD considered commissioning its consultant and Government contractor to carry out default works for Building E. Since no communal foul manhole was available nearby for relinking the misconnected drains, BD sought advice from DSD on drainage connections. DSD proposed a feasible solution, including alterations to the drains and addition of a communal foul manhole.

	2015	
(6)	January	BD and DSD agreed that the costs of alterations and addition works were to be borne by the owners in Building E. Based on the scope of works approved by BD, DSD prepared the cost estimate and project schedule.
(7)	June	As the repair order had not been complied with, BD issued a warning letter to all owners in Building E.
(8)	August	BD requested DSD to provide the communal sewerage plans in the vicinity of Building E for preparation of the remedial solution.
(9)	October	A developer submitted the re-development plans of Building E for the first time.
	2017	
(10)	November	BD approved the building plans for Building E's re-development.
	2020	
(11)	May	Building E was scheduled for demolition and all its units had been vacated. BD suspended the default works.

3.16 BD attributed the lack of tangible progress in Case (5) for four years between 2016 and 2019 to the re-deployment of the responsible officer to handle other more urgent cases involving building safety (see **paras. 2.18 and 2.19**). Moreover, BD approved in 2017 the building plans for the private re-development project involving Building E. Since the developer had drawn up the demolition and re-development schedule and appointed an authorised person to monitor the building's condition, BD needed not take any immediate action except monitoring the condition of its pipework. BD also explained that it did not take the initiative to refer Case (5) to HAD for further action because the owners in Building E had not indicated any wish for forming or any difficulties forming an OC.

4

ODOUR PROBLEM AND MITIGATING MEASURES

4.1 Wastewater discharged into the sea through the stormwater collection system would impact on the water quality of nearshore areas and cause foul odours. To improve the situation, EPD has constructed dry weather flow interceptors ("DWFIs") with DSD's assistance to prevent pollution discharge into coastal waters through the system, and divert wastewater to sewage treatment plants for purification. DSD would also place odour control hydrogel in drainage systems as needed to alleviate the unpleasant smells generated by wastewater.

ODOUR PROBLEM AT TSUEN WAN WATERFRONT

4.2 The odour problem at the Tsuen Wan waterfront has persisted for years. EPD attributed it to not only the sewer misconnection problem in the district but also the discharge of street wastewater and pollutants into the stormwater collection system.

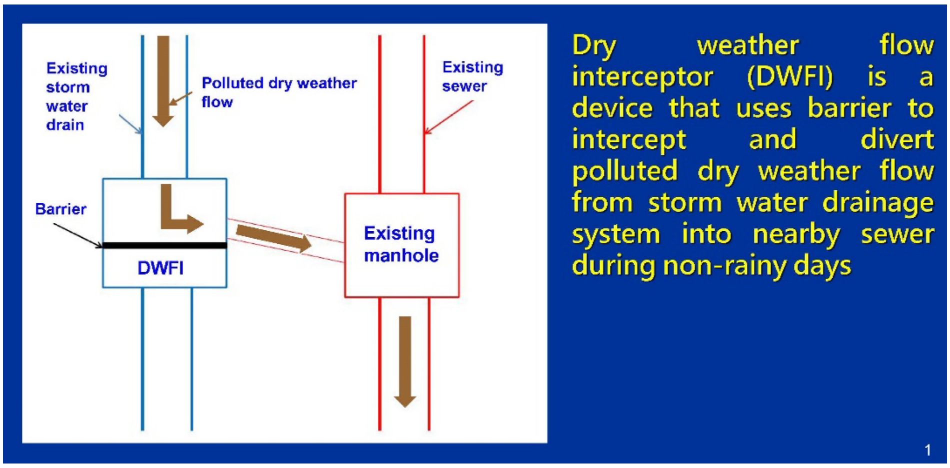
4.3 In the Review of West Kowloon and Tsuen Wan Sewerage Master Plans completed in 2010, EPD identified 52 sewer misconnection cases involving illegal discharge of wastewater. Of which, 38 were rectified as at April 2020. The remaining 14 outstanding cases involved misconnected communal sewers of buildings in old districts. As around half of such buildings had no OCs, the owners and residents needed more time to work out a solution. For the 14 outstanding cases, four had been rectified, three were being dealt with by the default works carried out by BD's Government contractors and another three by the owners' contractors as at mid-March 2021. BD has brought charges against the owners for non-compliance with the statutory orders for the remaining four cases.

4.4 The aforesaid Review of West Kowloon and Tsuen Wan Sewerage Master Plans proposed to install four DWFIs in Tsuen Wan district, which were completed by DSD in September 2019.

DWFIs

4.5 DWFIs (see **Figure 1**) are facilities installed within the stormwater collection system. After receiving the proposal for construction of DWFIs from EPD, DSD will conduct a feasibility study on the availability of necessary space at the proposed site, possible impacts on traffic during the works period, etc.

Figure 1: Design concept of DWFI

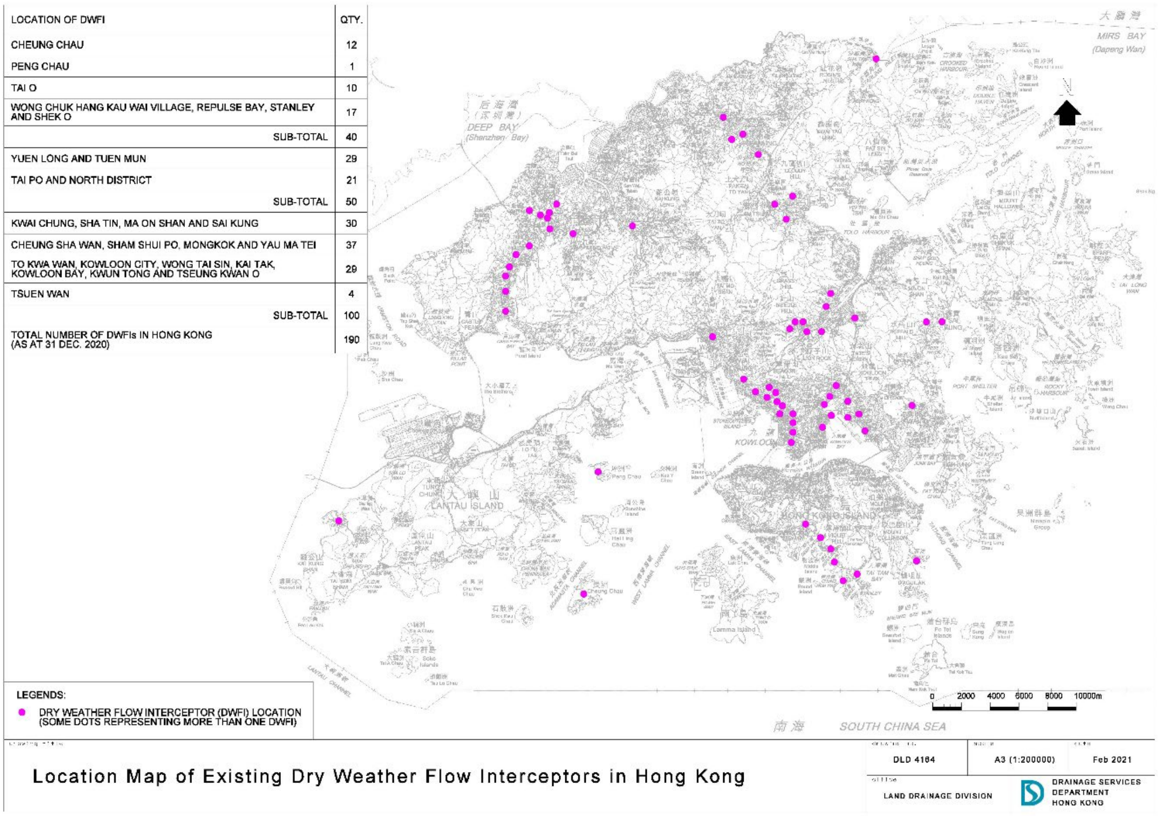


4.6 DWFIs come with different designs and their size varies according to the catchment area of the local stormwater collection system, and the intake capacity of the sewerage system in the vicinity. A DWFI can cater for a small street or village accommodating hundreds of people, or a community of several hundred thousand residents. Equipped with such devices as barriers or overflow weirs, DWFIs intercept polluted runoff in dry weather and divert it to sewage treatment plants for processing before it enters the sea. DWFIs stop operating in periods of heavy rain. Generally speaking, DWFIs operate in around 70%[6] of the time per year to reduce pollution discharge into the sea through the stormwater collection system. For the remaining periods, pollutants are substantially diluted before entering the sea.

6 Based on the rainfall data of the Hong Kong Observatory, non-rainy days accounted for an average of 70% of the time per year. On this basis, EPD estimated that DWFIs could intercept around 70% of the total pollution discharge from the catchment area through the stormwater collection system annually.

4.7 As at December 2020, there were 190 DWFIs across the territory (see **Figure 2**). The number is expected to increase to 193 by 2023.

Figure 2: Location of DWFIs



ODOUR CONTROL HYDROGEL

4.8 The odours of drainage are largely generated by hydrogen sulphide and volatile organic compounds. Odour control hydrogel is an innovative material jointly developed by DSD and the Hong Kong University of Science and Technology, the research of which started in late 2016. As at December 2020, research results revealed that odour control hydrogel could effectively reduce the concentration of hydrogen sulphide in the drainage system. Its efficacy in inhibiting the volatile organic compounds in the drainage system is still under study.

4.9 To alleviate the odour problem in specific areas, DSD would consider whether there are any locations (including those subject to frequent odour complaints) suitable for placing odour control hydrogel with regard to factors like the condition of drainage system and the substances causing the foul odours. As at December 2020,

odour control hydrogel was placed in the drainage system at 220 locations across the territory. Nevertheless, odour control hydrogel cannot mitigate the pollution caused by the inflow of sewage into the sea through the stormwater collection system.

5

COMMENTS AND RECOMMENDATIONS

PREAMBLE

5.1 After examining information from EPD, BD and DSD, we consider DSD, as a supporting department, to have properly performed its duties in investigating and referring sewer misconnection cases, as well as implementing mitigating measures (including construction of DWFIs and placement of odour control hydrogel in the drainage system).

5.2 Our comments regarding the handling of sewer misconnection cases by EPD and BD are as follows.

EPD

(I) EPD Should Endeavour to Collect Evidence and Take Enforcement Action

5.3 Under the WPCO, the burden is on EPD to adduce evidence to prove the suspect to have discharged wastewater into the stormwater collection system in order to substantiate a charge against him or her. To do that, EPD officers have to enter the suspected premises and search for wastewater discharging on the spot. The officers need to collect wastewater samples for testing and conduct dye-tracing tests immediately to establish the link between the inlet and outlet of discharge. However, it would be impossible for EPD officers to do so and take follow-up actions pursuant to the WPCO if the suspect stops using relevant facilities in their presence (see **para. 2.12**). We acknowledge the practical difficulties facing EPD in enforcing the WPCO under the

current circumstances. However, EPD should still try its best to take enforcement action against offenders under the WPCO as far as possible, so as to contain coastal water pollution caused by the inflow of untreated sewage.

5.4 EPD asserted that, given the complexity of drainage connections of buildings in Hong Kong, it is often impossible to trace pollution sources or locations of sewer misconnection by mere observation of the drainage pipes at the building's external wall without referring to the drainage plans. As such, satisfying the requirements for obtaining a Warrant of Entry from the court would be impossible. Moreover, experience shows that chances of gathering evidence successfully are unlikely, regardless of entering the suspected premises with the consent of the residents or under a Warrant of Entry. Thus, EPD seldom applies for a Warrant of Entry unless necessary (see **para. 2.12**). We have reservation on EPD's understanding of the standard of proof for obtaining a Warrant of Entry.

5.5 In our view, where sewer misconnection of a premises can be seen from the outside, it is highly probable that wastewater is being discharged by its residents into the building's stormwater manhole continuously. If EPD can identify sewer misconnection on the building's external wall and obtain wastewater samples from the building's stormwater manhole, such *prima facie* evidence, though not conclusive for establishing an offence under the WPCO, should be able to help obtain a Warrant of Entry for further investigation. We recommend that EPD seek DoJ's advice to explore the possibility of using circumstantial evidence for warrant applications to facilitate in-depth investigation and evidence collection under the current legal framework regarding these suspected sewer misconnection cases.

5.6 Furthermore, we note that the UBW items associated with sewer misconnection are categorised as actionable ones (see **para. 2.6**). Pursuant to the BO (see **Appendix II**), BD is empowered to enter relevant premises for compliance checks. In case the occupant is uncooperative or refuses BD officers' entry for investigation, BD may apply to the magistrate for a Warrant of Entry, which will be issued if the latter is satisfied there are reasonable grounds for suspecting that the drains or sewers of the premises are in a defective or insanitary condition. For cases with difficulties entering the premises, we recommend that, in addition to applying for a Warrant of Entry (see **para. 5.5**), EPD also consider taking joint action with BD for greater success of entering such premises for investigation.

5.7 In Case (1), Guesthouse A's sewer misconnection problem was confirmed by the result of dye-tracing tests. However, since Building A's communal plumbing installation was complex, EPD could not rule out the discharge of other wastewater into the communal stormwater drains through the communal pipes. Hence, it did not take any wastewater samples for bringing charge against Guesthouse A (see **para. 3.4**). Our view is that before giving up on taking wastewater samples, EPD should redouble its efforts to gather evidence to identify other possible sources of wastewater discharge, such as inspecting Building A's drainage system plans.

5.8 We do not agree with EPD's view that, the problem of sewer misconnection could only be rectified by BD compelling the responsible person to carry out remedial works pursuant to the BO (see **para. 2.15**) due to the lack of similar provisions under the WPCO. Admittedly, sewer misconnection is a UBW-related problem. As EPD pointed out, the WPCO's purpose is to target persons illegally discharging wastewater (see **para. 2.15**). We do not consider EPD's enforcement against illegal discharge of wastewater in disaccord with BD's enforcement against UBW. In fact, they are complementary. Aside from referring sewer misconnection cases to BD, EPD should simultaneously redouble its efforts in enforcement action against illegal discharge of wastewater under the WPCO.

5.9 In the long run, EPD should review the WPCO and consider legislative amendments to enhance its enforcement effectiveness.

BD

(II) Serious Delay in Handling Sewer Misconnection Cases

5.10 As shown in Cases (2) and (4), BD received the referral of sewer misconnection cases in October 2009 (see **paras. 3.5 and 3.11**). However, the problem in both cases had remained unrectified for more than 11 years as at December 2020 (see **item (12), Table 4** under **para. 3.6 and item (13), Table 6** under **para. 3.12**). In Case (3), BD got the referred sewer misconnection case in November 2009 (see **para. 3.8**). The problem was resolved in 2020 (see **item (17), Table 5** under **para. 3.9**) only in more than a decade. In Case (5), BD received the referral in November 2012 (see **para. 3.14**). The problem saw a chance of resolution after seven and a half years in May 2020, when the building concerned was set for demolition with all units vacated (see **item (11), Table 7** under **para. 3.15**). The above cases revealed serious delay on the

part of BD in handling sewer misconnection cases. BD should take effective measures to avoid recurrence of similar incidents. The reasons for delay, as far as we know, are as follows.

(III) Case Monitoring Mechanism Not Effective

5.11 BD officers monitor the progress of case handling with the help of the department's BCIS. Its Progress Monitoring Committee (including its directorate grade officers as members) also monitors and follows up on cases of outstanding statutory orders on a regular basis (see **para. 2.17**). While BD has established the monitoring mechanism at different levels, some of the statutory orders were only complied with, or remained outstanding, years after issuance (see **para. 5.10**). This reflects that the mechanism is not effective as expected.

(IV) Failing to Initiate Investigation Swiftly

5.12 As shown in Case (2), after receiving EPD's referral of the suspected case of sewer misconnection at Building B in October 2009, BD only proceeded to conduct inspection and dye-tracing tests at the building in March 2010 (i.e. after five months) (see **para. 3.5**). In Case (4), BD received EPD's referral of the case at Building D in October 2009 (see **para. 3.11**). While BD issued an advisory letter to the owners in Building D in March 2010 (i.e. five months later) urging them to carry out necessary repairs, it was not until January 2013 (i.e. three years after receiving the referral) the joint inspection and dye-tracing tests with EPD were completed (see **para. 3.11**). In Case (5), BD received EPD's referral of the case at Building E in November 2012 (see **para. 3.14**). It was not until August 2013 (i.e. after nine months) that the joint inspection and dye-tracing tests with EPD and DSD were conducted (see **item (1), Table 7** under **para. 3.15**). We are of the view that upon receiving complaints or referrals of sewer misconnection cases, BD should swiftly initiate investigation into the cases, so that corresponding enforcement actions can be taken to prevent aggravation of the problem.

(V) Failing to Properly Allocate Manpower for Handling Sewer Misconnection Cases, Resulting in Cases Held in Abeyance for Years

5.13 In Case (2), after the joint inspection and dye-tracing tests with EPD done in December 2014, BD only proceeded to another round of inspection and dye-tracing tests jointly with EPD in July 2019 (i.e. after four and a half years) (see **items (4)–(5), Table**

4 under **para. 3.6**). In Case (3), after a compliance inspection in July 2011, BD did not conduct another compliance inspection until October 2014 (i.e. after more than three years) (see **items (6)–(7), Table 5** under **para. 3.9**). Subsequently, BD issued a warning letter to OC-C in November 2015, but only conducted a compliance inspection three years later in December 2018 (see **items (9)–(10), Table 5**). In Case (4), after receiving in July 2016 Consultant I's preliminary investigation report regarding the default works, BD followed up the case more than three years later in September 2019 (see **items (6)–(8), Table 6** under **para. 3.12**). In Case (5), BD requested DSD to provide the communal sewerage plans in the vicinity of Building E in August 2015. In May 2020 (i.e. after more than four and a half years), BD had to suspend the default works because the building was to be demolished with all units vacated (see **items (8) and (11), Table 7** under **para. 3.15**).

5.14 BD explained that progress was not conspicuous over several years in the above cases mainly because the responsible case officers were re-deployed for other more urgent cases concerning building safety (including reports of UBW items and derelict or defective buildings), and the department was facing persistent case backlogs (see **paras. 2.18, 2.19, 3.7, 3.10, 3.13 and 3.16**). Since BD needed to address critical building safety issues through staff re-deployment, the progress of other cases was inevitably affected (see **para. 2.18**). Nevertheless, as such cases were without progress for years, it calls into question whether BD has properly allocated manpower to handle sewer misconnection cases. In fact, given that UBW items in such cases being actionable ones under BD's enforcement policy against UBW (see **para. 2.6**), it is highly unsatisfactory that they were held in abeyance for years. We urge BD to learn from experience that it should, whilst addressing critical building safety issues, deploy manpower to continuously process and resolve other cases involving actionable UBW items.

(VI) Indecisive Enforcement Action

5.15 In Case (3), after serving the repair order on OC-C in July 2010 (see **item (2), Table 5** under **para. 3.9**), BD conducted eight compliance inspections. Although all the inspections revealed that the sewer misconnection had not been rectified (see **items (4), (6) and (7), Table 5**), BD did not issue any warning letter to OC-C. During a further compliance inspection in October 2015, BD found that the sewer misconnection remained unrectified (see **item (8), Table 5**). In the next month (i.e. November 2015, five years after serving the repair order), BD eventually issued a warning letter to OC-C (see **item (9), Table 5**). In Case (4), following a compliance

inspection revealing the unrectified sewer misconnection (see **item (3), Table 6** under **para. 3.12**), BD issued a warning letter to all owners in Building D after six months (see **item (4), Table 6**). We see the need for BD to take decisive action to urge for the owners' quick fix of sewer misconnection if the problem remains after the specified period in the statutory order lapses.

(VII) Need for Proactive Assistance to "Three-nil" Buildings

5.16 The buildings involved in Cases (4) and (5) were without OCs (see **paras. 3.11 and 3.14**). To deal with the sewer misconnection problem of the buildings, BD issued to the owners concerned various documents, including advisory letters, repair orders, warning letters and/or letters regarding default works for their buildings (see **para. 3.11, items (1), (2), (4), (5), (10) and (11), Table 6** under **para. 3.12 and items (2)–(4) and (7), Table 7** under **para. 3.15**), but the owners did not respond. We acknowledge the difficulty in compliance with BD's statutory order through the coordination among the owners of a building without OC. BD indicated that a referral to HAD would be made if such owners so wished, with a view to assisting them to form an OC, which would in turn enable better planning and coordination of drainage rectification works. However, in Cases (4) and (5), BD only mentioned in the warning letters to all owners in Building D in December 2015 (see **item (4), Table 6**) and to all owners in Building E in May 2014 (see **item (4), Table 7**) that they could approach BD or HAD if they need further guidance or assistance for complying with the order. BD failed to proactively refer the cases to HAD by reason of the owners' lack of indication on forming an OC or difficulties in so doing (see **paras. 3.13 and 3.16**). BD was far from proactive by simply leaving it to the owners to approach HAD and referring their cases to HAD if prompted by them. BD should, when communicating with the owners concerned, proactively introduce the service of HAD regarding OC formation.

5.17 Since sewer misconnection may cause a serious hygienic or environmental nuisance (see **para. 2.6**), we recommend that BD take the initiative to refer to HAD those cases involving "three-nil" buildings (i.e. buildings without an OC, any form of residents' organisation or engaging a property management company), just like how BD supports the owners of "three-nil" buildings in light of their compliance with fire safety directives. This would facilitate HAD to assist the owners to form an OC and advise them on matters of compliance with the statutory order. BD should also mobilise its in-house Social Services Teams to assist the owners on a need basis, such as coordinating the residents to carry out checks and works as necessary, assisting them to apply for suitable financial supports, etc. Moreover, we recommend that BD step up prosecution

against the owners of "three-nil" buildings not complying with its statutory orders, thereby urging for their earliest possible remedial works. BD should also consider commissioning default works early for those buildings posing serious nuisance and risks to environmental hygiene and with little progress in renovation, such that the sewer misconnection problem can be eliminated at the soonest.

OTHER ASPECT

(VIII) Need for Resolution of Sewer Misconnection Problem at Source

5.18 While DWFIs can prevent wastewater from entering the stormwater collection system, and odour control hydrogel can alleviate the unpleasant smells arising from the wastewater already discharged into the stormwater collection system (see **paras. 4.6 and 4.8**), these are merely relief measures. We reckon that the most effective way is to root out the problem of sewer misconnection at source. We encourage EPD, BD and DSD to continue with their proactive efforts in detection of sewer misconnection, enforcement against confirmed cases of misconnection, and launching publicity and education campaigns to uproot the problem.

RECOMMENDATIONS

5.19 In light of the above, The Ombudsman makes the following recommendations to EPD and BD respectively:

EPD

(1) seeking legal advice from DoJ to explore the possibility of adducing circumstantial evidence for warrant applications (see **para. 5.5**);

(2) considering taking joint action with BD for cases with difficulties in gaining entry onto the premises, so as to increase the success rate of entering such premises for investigation (see **para. 5.6**);

(3) reviewing the WPCO and considering making legislative amendments to enhance its enforcement effectiveness (see **para. 5.9**);

BD

(4) reviewing cases with outstanding statutory orders with a schedule drawn up for backlog clearance (see **para. 5.10**); and considering, where necessary, requesting allocation of more resources from the Government to address the persistent issue of resource constraints (see **para. 5.14**);

(5) improving the mechanism for monitoring case progress (see **para. 5.11**), and conducting site inspections swiftly and taking enforcement actions decisively (see **paras. 5.12 and 5.15**);

(6) considering proactively referring those sewer misconnection cases involving "three-nil" buildings to HAD, and arranging BD's in-house Social Services Teams to assist the owners on a need basis (see **para. 5.17**);

(7) stepping up prosecution against the owners of "three-nil" buildings not complying with its statutory orders (see **para. 5.17**); and

(8) considering promptly commissioning default works for those buildings that have posed serious nuisance and risks to environmental hygiene and have had little progress in renovation (see **para. 5.17**).

ACKNOWLEDGEMENTS

5.20 The Ombudsman would like to thank EPD, BD and DSD for their full cooperation in the course of this investigation.

Office of The Ombudsman
Ref: OMB/DI/440
March 2021

Appendices

9. Prohibited discharges into communal sewers and communal drains

(1) Subject to section 12, a person commits an offence who discharges any matter into a communal sewer or communal drain in a water control zone other than—

(a) a discharge of domestic sewage into a communal sewer or communal drain that—

(i) is vested in and maintained by the Government as a sewer or drain for the carriage of foul water;

(ii) conducts the discharge into a communal sewer or communal drain that is vested in and maintained by the Government as a sewer or drain for the carriage of foul water; or

(iii) delivers the sewage to a wastewater treatment facility, the discharge from which is licensed; *(Replaced 83 of 1993 s. 6)*

(aa) a discharge of domestic sewage into—

(i) a communal sewer; or

(ii) a communal drain,

that has been designated by the Authority, by notice in the Gazette, as a communal sewer or communal drain for the carriage of foul water or surface drainage water; or *(Added 67 of 1990 s. 5. Amended 83 of 1993 s. 6)*

(b) a discharge of unpolluted water into—

(i) a communal sewer; or

(ii) a communal drain,

for the carriage of surface drainage water. *(Amended 67 of 1990 s. 22)*

(2) Where any matter is, in contravention of subsection (1), discharged into a communal sewer or communal drain in a water control zone from any premises, then, subject to section 12, the occupier of the premises commits an offence, in addition to any other person who may be guilty of an offence under subsection (1). *(Amended 67 of 1990 ss. 5 & 22)*

(3) In subsection (1)—

domestic sewage (住宅污水) means waste of a kind and quantity that is generated by the domestic use of a toilet, watercloset, bath, shower, sink, basin or other sanitary fitment by a person residing in a household or while at a place of work but does not include—

(a) the solid residue from a wastewater treatment facility;

(b) the effluent from a wastewater treatment facility that uses electrical or mechanical equipment in its operation; or

(c) waste that is generated by a food business that is subject to the Food Business Regulation (Cap. 132 sub. leg. X); *(Replaced 83 of 1993 s. 6. Amended 78 of 1999 s. 7; E.R. 3 of 2018)*

unpolluted water (沒有污染的水) means—

(a) rain water from any part of a building, including any area appurtenant to a building;

(b) water which does not contain any poisonous, noxious or polluting matter.

(4) This section does not apply to—

(a) *(Repealed 67 of 1990 s. 5)*

(b) water used—

(i) for firefighting purposes;

(ii) in connexion with an occurrence in which life or property is endangered;

(iii) for the cleansing of streets, thoroughfares, and other areas.

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11. Penalties

(1) A person who commits an offence under section 8(1), 8(2), 9(1) or 9(2) is liable to imprisonment for 6 months and—

(a) for a first offence, a fine of $200,000;

(b) for a second or subsequent offence, a fine of $400,000,

and in addition, if the offence is a continuing offence, to a fine of $10,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Amended 67 of 1990 ss. 7 & 22; 83 of 1993 s. 7)*

(2) A person who commits an offence under section 8(1A) or who commits an offence under section 9(1) or (2) by discharging any poisonous or noxious matter into a communal sewer or communal drain is liable to—

(a) for a first offence, a fine of $400,000 and imprisonment for 1 year;

(b) for a second or subsequent offence, a fine of $1,000,000 and imprisonment for 2 years, *(Amended E.R. 3 of 2018)*

and in addition, if the offence is a continuing offence, to a fine of $40,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Added 83 of 1993 s. 7)*

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37. Powers of authorized officers to enter premises etc.

(1) Subject to subsection (2), an authorized officer may, for the purposes of this Ordinance, without a warrant enter any place or premises or stop and board any vessel—

(a) from or on which he has reason to suspect that, in contravention of section 8(1) or (1A), matter has been or is being discharged or deposited into the waters of Hong Kong or inland waters, or, in contravention of section 9(1), matter has been or is being discharged or deposited into any communal sewer or communal drain;

(b) from or on which matter is being discharged or deposited as mentioned in paragraph (a) pursuant to a licence, whether or not there is a suspected contravention of section 8 or 9;

(c) on which he has reason to believe there is any thing likely to be, or to contain, evidence of an offence against this Ordinance.

(2) An authorized officer shall not under subsection (1) enter domestic premises (other than that part of such premises on which there is a private wastewater treatment facility) or board any vessel used wholly or principally for dwelling purposes without a warrant issued by a magistrate under subsection (3). *(Amended 83 of 1993 s. 24)*

(3) A magistrate may issue a warrant empowering any authorized officer to enter domestic premises or to board any vessel used wholly or principally for dwelling purposes if the magistrate is satisfied by information on oath that there is reasonable ground for suspecting that—

(a) contrary to section 8(1) or (1A), any matter is being or has been discharged or deposited into the waters of Hong Kong or inland waters from those premises or that vessel; or

(b) contrary to section 9(1), any matter is being or has been discharged or deposited from those premises or that vessel into any communal sewer or communal drain;

(c) there is on those premises or on that vessel any thing likely to be, or to contain, evidence of an offence against this Ordinance.

(3A) Where an authorized officer or authorized agent has reasonable grounds for believing that it is necessary for the purpose of carrying out any work under section 13A or authorized under the regulations, he may without warrant enter any place or premises on which any inspection, survey or work is to be carried out or through which access is needed for that purpose. *(Added 83 of 1993 s. 24)*

(3B) An authorized officer or authorized agent shall not under subsection (3A) enter domestic premises without a warrant issued by a magistrate under subsection (3C). *(Added 83 of 1993 s. 24)*

(3C) A magistrate may issue a warrant empowering an authorized officer or authorized agent to enter any premises if he is satisfied by information on oath that the entry is required for the purpose of section 13A or for the purposes authorized under the regulations. *(Added 83 of 1993 s. 24)*

(4) An authorized officer or authorized agent who enters any place or premises or boards any vessel—

(a) shall, if so required, produce evidence of his identity and of his authorization by the Authority under this Ordinance; and

(b) shall, if a warrant is under subsection (3) or (3C) required for entry, produce that warrant. *(Amended 83 of 1993 s. 24)*

(Amended 67 of 1990 s. 22)

39. Analysis of samples

(1) A certificate of analysis of a sample of any matter may be tendered in evidence in any proceedings under this Ordinance and shall, until the contrary is proved, be sufficient evidence of the facts stated therein if the procedure set out in this section has been complied with, or substantially complied with so far as is reasonably practicable, in relation to that sample.

(2) An authorized officer who takes a sample of any matter for the purposes of subsection (1) shall—

(a) divide it into 3 approximately equal parts;

(b) place each part in a separate container and suitably mark or label each container;

(c) ensure that the person appearing to be in occupation of the premises on which the sample was taken or his servant or agent—

(i) is handed such one of the parts as that person or his servant or agent may select or, if that is not reasonably practicable, is handed or sent by registered post such one of the parts as the officer shall select; and

(ii) is informed that one of the other 2 parts is intended to be submitted to the analyst for analysis;

(d) except where an analysis proves to be unnecessary, personally submit one of the remaining 2 parts to the analyst for analysis and retain the other for the purposes of comparison.

(3) As soon as the analyst has completed the analysis he shall furnish to the Authority and to the person referred to in subsection (2)(c), or his servant or agent, a certificate of the results of the analysis. *(Amended 83 of 1993 s. 26)*

(4) A certificate under subsection (3) shall be signed by the analyst but the analysis may be made by a person acting under his directions; and any certificate purporting to have been signed by the analyst shall be presumed, until the contrary is proved, to have been signed by him.

(5) In this section ***analyst*** (化驗師) means the Government Chemist or any person appointed by the Governor as an analyst for the purposes of this section.

(6) An appointment by the Governor under subsection (5) shall be notified in the Gazette.

22. Powers of Building Authority

(1) Subject to subsection (1A), the Building Authority or an authorized officer may at any time enter and where necessary, in the presence of a police officer, break into any premises or enter upon any land— *(Amended 24 of 2012 s. 4)*

(a) to ascertain whether any building, structure, street or natural, formed or man-made land is dangerous or liable to become dangerous; *(Amended 72 of 1980 s. 7)*

(b) to inspect or test any groundwater drainage works, drainage works, drainage system, sewerage works or sewerage system; *(Amended 44 of 1959 s. 8; 41 of 1982 s. 7; 24 of 2012 s. 4)*

(c) to ascertain whether the provisions of this Ordinance or of any notice order or regulation hereunder are being complied with;

(d) to carry out or cause to be carried out any work which he is authorized to carry out under this Ordinance. *(Amended 44 of 1959 s. 8)*

(1A) Except in case of emergency, neither the Building Authority nor an authorized officer may enter or break into the premises, or enter upon the land under subsection (1) unless—

(a) the entry is permitted by the owner, occupier, or person who appears to have control or management of the premises or land; or

(b) a warrant is obtained under subsection (1B). *(Added 24 of 2012 s. 4)*

(1B) A magistrate may issue a warrant authorizing the Building Authority or an authorized officer to enter and, if necessary, break into any premises or enter upon any land for any of the purposes mentioned in subsection (1) if the magistrate is satisfied by information on oath that—

(a) there are reasonable grounds for suspecting—

(i) with respect to building works that have been or are being carried out to the premises or land—

(A) that there is a material divergence or deviation from any plan approved by the Building Authority under this Ordinance or required to be submitted to the Building Authority under the simplified requirements; or

(B) that they are not in compliance with the standard of structural stability, public health or fire safety established by regulations;

(ii) that the use of the premises has been changed in contravention of section 25(1) or (2);

(iii) that the premises have been, or the land has been, rendered dangerous, or the premises are, or the land is, liable to become dangerous;

(iv) that the drains or sewers of the premises or land are in a defective or insanitary condition; or

(v) that a notice or order served under this Ordinance has not been complied with;

(b) the entry into the premises or upon the land by the Building Authority or an authorized officer—

(i) was refused; or

(ii) could not be gained despite a visit made to the premises or land on at least 2 different days; and

(c) notice of the intention to apply for a warrant has been served on the owner or occupier of the premises or land. *(Added 24 of 2012 s. 4)*

(1C) A warrant issued under subsection (1B) must specify—

(a) the premises or land to be entered;

(b) the purpose of the entry;

(c) the name and capacity of the person authorized to enter the premises or land; and

(d) the date of the issue of the warrant. *(Added 24 of 2012 s. 4)*

(1D) If the Building Authority or an authorized officer enters or breaks into any premises, or enters upon any land, under a warrant issued under subsection (1B), the Building Authority or authorized officer must produce to the owner, occupier, or person who appears to have control or management of the premises or land the warrant for inspection. *(Added 24 of 2012 s. 4)*

(1E) When entering any premises or land under this section, the Building Authority or an authorized officer may be accompanied by any person that the Building Authority or authorized officer considers necessary for the purpose of the entry. *(Added 24 of 2012 s. 4)*

(1F) On leaving any unoccupied premises or land entered under this section, the Building Authority or an authorized officer must leave the premises or land as effectually secured against trespassers as the premises or land was found at the time of entry. *(Added 24 of 2012 s. 4)*

(1G) A warrant issued under subsection (1B) continues in force until the purpose for which entry is necessary has been fulfilled. *(Added 24 of 2012 s. 4)*

(2) For the purposes of subsection (1)—

(a) access to every part of any building works or street works shall be provided by the registered general building contractor, registered specialist contractor or registered minor works contractor; and *(Replaced 20 of 2008 s. 18)*

(b) the Building Authority or an authorized officer may take any steps that he or she considers necessary, including the making of openings and the taking of reasonable samples. *(Amended 44 of 1959 s. 8; 24 of 2012 s. 4)*

(3) The Building Authority may by order in writing require an authorized person to carry out such tests as may be specified in the order. *(Amended 52 of 1974 s. 9)*

(4) The Building Authority may specify any form for the purposes of this Ordinance. *(Added 68 of 1993 s. 13)*

(5) In this section—

authorized officer (獲授權人員) means a public officer authorized in writing by the Building Authority for any of the purposes mentioned in subsection (1). *(Added 24 of 2012 s. 4)*

24. Order for demolition, removal, or alteration of building, building works (other than minor works commenced under simplified requirements) or street works

(Amended 20 of 2008 s. 20)

(1) Where any building has been erected, or where any building works or street works have been or are being carried out in contravention of any of the provisions of this Ordinance the Building Authority may by order in writing require—

(a) the demolition of the building, building works, or street works; or

(b) *(Repealed 43 of 1993 s. 6)*

(c) such alteration of the building, building works or street works as may be necessary to cause the same to comply with the provisions of this Ordinance, or otherwise to put an end to the contraventions thereof,

and in every case specify the time within which the demolition, alteration or work required by such order shall be commenced and the time within which the same shall be completed. *(Amended 16 of 1966 s. 7; 43 of 1993 s. 6)*

(1A) Subsection (1) does not apply in respect of minor works commenced under the simplified requirements. *(Added 20 of 2008 s. 20)*

(2) An order made under subsection (1) shall be served on—

(a) in the case of a building or building works but subject to subsection (2A), the owner of the land or premises on which the building has been erected or on which the building works have been or are being carried out;

(b) in the case of street works, the frontagers; and

(c) in the case of building works the subject matter of which is a signboard—

(i) the person for whom the signboard has been erected or is being erected; or

(ii) if that person cannot be found, the person who would receive any rent or other money consideration if the signboard were hired out or the person who is receiving such rent or money consideration; or

(iii) if the persons referred to in subparagraphs (i) and (ii) cannot be found, the owner of the land or premises on which the signboard has been erected or is being erected. *(Replaced 15 of 2004 s. 21)*

(2A) Where the building or building works referred to in subsection (2)(a) is or are—

(a) connected to land or premises (in this section referred to as ***other land or premises***) other than the land or premises on which the building has been erected or on which the building works have been or are being carried out; and

(b) occupied or used by the owner or occupier of that other land or premises,

subsection (2)(a) shall not apply and in such a case, an order made under subsection (1) in respect of the building or building works shall be served on the owner of that other land or premises. *(Added 15 of 2004 s. 21)*

(2B) References in subsections (2)(a) and (2A) to building works do not include references to building works the subject matter of which is a signboard. *(Added 15 of 2004 s. 21)*

(2C) The Building Authority may, upon the service of an order under subsection (2)(a), (b) or (c)(iii) or (2A), cause the order to be registered in the Land Registry against—

(a) if the order has been served on the owner of any land or premises in accordance with subsection (2)(a) or (c)(iii), the land or premises;

(b) if the order has been served on the frontagers in accordance with subsection (2)(b), the premises of the frontagers to which the street works relate; or

(c) if the order has been served on the owner of other land or premises in accordance with subsection (2A), that other land or premises. *(Added 15 of 2004 s. 21)*

(3) If an order made under subsection (1) is not complied with, the Building Authority may demolish or alter or cause to be demolished or altered such building, building works or street works. *(Amended L.N. 283 of 1986; 43 of 1993 s. 6)*

(4) Subject to subsection (4A), the cost of any demolition or alteration under subsection (3) in relation to the building, building works or street works to which the order relates shall be recoverable from—

(a) if the order had been served on the owner of any land or premises in accordance with subsection (2)(a) or (c)(iii), that owner;

(b) if the order had been served on the frontagers in accordance with subsection (2)(b), those frontagers;

(c) if the order had been served on a person in accordance with subsection (2)(c)(i) or (ii), that person; or

(d) if the order had been served on the owner of other land or premises in accordance with subsection (2A), that owner. *(Replaced 15 of 2004 s. 21)*

(4A) Where the order has been registered with the Land Registry in accordance with subsection (2C), the cost of any demolition or alteration under subsection (3) in relation to the building, building works or street works to which the order relates shall be recoverable from—

(a) if the order had been served on the owner of any land or premises in accordance with subsection (2)(a) or (c)(iii), the person who, as at the date of completion of the demolition or alteration, is the owner of that land or premises;

(b) if the order had been served on the frontagers in accordance with subsection (2)(b), the persons who, as at the date of completion of the demolition or alteration, are the frontagers to which the street works relate; or

(c) if the order had been served on the owner of other land or premises in accordance with subsection (2A), the person who, as at the date of completion of the demolition or alteration, is the owner of that other land or premises. *(Added 15 of 2004 s. 21)*

(4B) Where the cost of any demolition or alteration is recovered from frontagers under subsection (4) or (4A), the Building Authority shall apportion the cost—

(a) in the case of private streets, according to the frontages of the premises owned by such frontagers; or

(b) in the case of access roads, equally. *(Added 15 of 2004 s. 21)*

(4C) A certificate purporting to be under the hand of the Building Authority and stating the date of completion of the demolition or alteration under subsection (3) shall be prima facie evidence of that fact. *(Added 15 of 2004 s. 21)*

(5) *(Repealed 43 of 1993 s. 6)*

(6) Subsection (1) has effect subject to section 112 of the Private Columbaria Ordinance (Cap. 630). *(Added 8 of 2017 s. 117 and E.R. 4 of 2017)*

(Replaced 44 of 1959 s. 10)

28. Drainage

(1) All drainage works for any building shall, save as provided by regulations, be carried out by the owner of such building to the satisfaction of the Building Authority and in compliance with regulations. *(Amended 44 of 1959 s. 12)*

(2) Where in the opinion of the Building Authority any group of buildings may be drained more advantageously in combination than separately he may—

(a) by an order in writing served on the owners of such buildings require to be carried out the necessary drainage works under a combined plan approved by him; or

(b) carry out or cause to be carried out such works, and recover the cost thereof from such owners.

(3) Where in the opinion of the Building Authority the drains or sewers of any building are inadequate or in a defective or insanitary condition he may by an order in writing served on the owner of such building require—

(a) such drainage works as may be specified in the order to be carried out;

(b) an authorized person to be appointed to carry out such investigation in relation to the drains or sewers of such building as may be so specified; and

(c) the submission for approval by the Building Authority of proposals for drainage works to be carried out to remedy the inadequacy or the defective or insanitary condition, being proposals based on the findings of the investigation,

within such time or times as may be specified in the order. *(Amended 42 of 1992 s. 3; 77 of 1992 s. 3)*

(4) Where proposals for drainage works are submitted pursuant to an order under subsection (3), the Building Authority may—

(a) approve the proposals;

(b) require amendments to or substitution of the proposals; or

(c) refuse to approve the proposals. *(Replaced 77 of 1992 s. 3)*

(5) On approving any proposal for drainage works required to be submitted under subsection (3), the Building Authority may by an order in writing served on the owner referred to in that subsection require the carrying out of such approved works within such time as may be specified in the order. *(Added 77 of 1992 s. 3)*

(6) All investigations specified in an order under this section shall be carried out to such standard acceptable to the Building Authority and in compliance with the regulations. *(Added 77 of 1992 s. 3)*

(6A) The Building Authority may, upon the service of an order under this section, cause the order to be registered by memorial in the Land Registry against the building to which the order relates. *(Added 55 of 1996 s. 8)*

(7) Where the owner referred to in subsection (3) cannot be found or fails to comply with any requirements of an order served under this section or where there is a failure to comply with any requirement in subsection (1) or (6) or where approval is refused for proposals submitted under this section, the Building Authority may, without further notice, carry out or cause to be carried out—

(a) all or any part of the drainage works or investigation specified in the order;

(b) such other investigation as he considers to be necessary or expedient; and

(c) such drainage works as he considers to be necessary or expedient to remedy the inadequacy or the defective or insanitary condition, having had regard to the findings of the investigation in relation to the drains or sewers of the building, whether such investigation is done by the owner referred to in subsection (3) or by the Building Authority,

and, subject to subsection (7A), the cost of such drainage works or investigation shall be recoverable from that owner. *(Added 77 of 1992 s. 3. Amended 55 of 1996 s. 8)*

(7A) If the order has been registered with the Land Registry in accordance with subsection (6A), the cost of any drainage works or investigation that the Building Authority carried out or caused to be carried out under subsection (7) shall be recoverable from any person who, as at the date of completion of the drainage works or investigation (as the case may be), is the owner of the building to which the order relates. *(Added 55 of 1996 s. 8)*

(7B) A certificate purporting to be under the hand of the Building Authority and stating the date of completion of any drainage works or investigation carried out under subsection (7) shall be prima facie evidence of that fact. *(Added 55 of 1996 s. 8)*

(8) In cases of emergency the Building Authority may carry out or cause to be carried out such drainage works as may appear to him to be necessary by reason of the emergency either with or without notice to the owner referred to in subsection (3) and the costs thereof shall be recoverable from that owner. *(Added 77 of 1992 s. 3)*

(9) The decision of the Building Authority that a particular case is one of emergency shall be final and binding on all persons. *(Added 77 of 1992 s. 3)*

(Amended 44 of 1959 s. 12)

40. Offences

(1AA) Any person who knowingly contravenes section 14(1) in respect of building works (other than minor works) or street works shall be guilty of an offence and shall be liable on conviction—

(a) to a fine of $400,000 and to imprisonment for 2 years; and

(b) to a fine of $20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Replaced 20 of 2008 s. 28)*

(1AB) Any person who commits an offence under section 4A(2) or 9AA(2) shall be liable on conviction to a fine at level 6. *(Added 20 of 2008 s. 28)*

(1) Any person who contravenes section 21(1) shall be guilty of an offence and shall be liable on conviction— *(Amended 15 of 2004 s. 31)*

(a) to a fine at level 6 and to imprisonment for 2 years; and

(b) to a fine of $5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Replaced 24 of 1979 s. 3)*

(1A) Any person who contravenes section 22(2)(a), 24B(14) or 27(5)(a) shall be guilty of an offence and shall be liable on conviction to a fine at level 2 and to imprisonment for 6 months. *(Added 24 of 1979 s. 3. Amended 91 of 1990 s. 6)*

(1B) Any person who—

(a) contravenes section 30(1) or 31(1); or

(b) without reasonable excuse, fails to comply with an order served on him under section 19(2), 20(2), 22(3), 23, 25(2), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4), 28(2)(a) or (3) or (5), 29(2)(a), 29A(2), 30(3) or 31(2)(a), *(Amended 77 of 1992 s. 4; 55 of 1996 s. 9; 15 of 2004 s. 31)*

shall be guilty of an offence and shall be liable on conviction —

(i) to a fine at level 5 and to imprisonment for 1 year; and

(ii) in the case of an offence consisting of a failure to comply with an order served on him under section 23, 25(2), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4) or 28(3) or (5) to a further fine of $5,000 for each day during which it is proved to the satisfaction of the court that the failure to comply with the order has continued. *(Added 24 of 1979 s. 3. Amended 72 of 1980 s. 15; 77 of 1992 s. 4; 55 of 1996 s. 9; 15 of 2004 s. 31)*

(1BA) Any person who, without reasonable excuse, fails to comply with an order served on him under section 24(1) shall be guilty of an offence and shall be liable on conviction—

(a) to a fine of $200,000 and to imprisonment for 1 year; and

(b) to a fine of $20,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Added 15 of 2004 s. 31)*

(1BB) Any person who, without reasonable excuse, fails to comply with an order served on him under section 24AA(1) shall be guilty of an offence and shall be liable on conviction—

(a) to a fine at level 5 and to imprisonment for 3 months; and

(b) to a fine of $5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Added 20 of 2008 s. 28)*

(1BC) Any person who, without reasonable excuse, fails to comply with a notice served on the person under section 30B(3), (4), (5) or (6) commits an offence and is liable on conviction—

(a) to a fine at level 5 and to imprisonment for 1 year; and

(b) to a fine of $5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Added 16 of 2011 s. 28)*

(1BD) Any person who, without reasonable excuse, fails to comply with a notice served on the person under section 30C(3) or (4) commits an offence and is, subject to subsection (1BE), liable on conviction—

(a) to a fine at level 4 and to imprisonment for 3 months; and

(b) to a fine of $2,000 for each day during which it is proved to the satisfaction of the court that the offence has continued. *(Added 16 of 2011 s. 28)*

(1BE) Before taking court proceedings against a person for an offence under subsection (1BD), the Building Authority must serve on the person a penalty notice described in Schedule 7. *(Added 16 of 2011 s. 28)*

(1BF) Schedule 7 has effect in relation to a penalty notice. *(Added 16 of 2011 s. 28)*

(1BG) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 7. *(Added 16 of 2011 s. 28)*

(1C) Any person who—

(a) without reasonable excuse, fails to comply with an order served on him under section 32(2); or